

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HONORABLE ARTHUR J. TARNOW

v.

No. 10-20075-3

ALISTAIR RUFUS MCGEE,

Defendant.

/

SHOW CAUSE HEARING

Thursday, July 8, 2010

Appearances:

Leonid Feller
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On behalf of Plaintiff

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On behalf of Defendant

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To obtain a certified transcript, contact:
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Transcript produced using machine shorthand and CAT software.

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1 Detroit, Michigan

2 Thursday, July 8, 2010

3 3:46 p.m.

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5 **THE CLERK:** Now calling the case of *United States of*
6 *America v. Alistair Rufus McGee*, Case Number 10-20075.

7 Will counsel identify yourselves for the record,
8 please.

9 **MR. FELLER:** Good afternoon, Your Honor,
10 Leonid Feller for the United States.

11 **MR. BURGESS:** And, good afternoon, Your Honor, may it
12 please this Honorable Court, David Burgess on behalf of
13 Alistair McGee.

14 **THE COURT:** Good afternoon. The primary reason for
15 this is the Show Cause Hearing, in which the government may
16 have an intellectual interest in but is not a participant, and
17 then we'll do some scheduling only as to your client, as we
18 have to repeat the exercise with either both defendants present
19 or at least with Mr. Porter present.

20 **MR. BURGESS:** And, Your Honor, just in --

21 **THE COURT:** Do you have counsel, Mr. Burgess?

22 **MR. BURGESS:** If need be, Your Honor, I can have my
23 partner here present. Does the Court want him?

24 **THE COURT:** It's your choice. You are the respondent
25 in this matter. It's a pretty serious thing when you miss a

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1 date, and coincidentally, your codefendant's attorney did show
2 up about 30 minutes late, but it's hard to run a court when
3 people don't appear on time. Is there any response from you?

4 **MR. BURGESS:** Your Honor, my -- first of all, I would
5 just like to start out by saying I do appreciate the Court
6 accommodating me this afternoon, but I would also like to start
7 off by saying that I apologized yesterday to your staff for not
8 appearing. I know an explanation --

9 **THE COURT:** Well, I hope you apologized to your
10 client and to the government.

11 **MR. BURGESS:** I do apologize to Mr. Feller, and I
12 apologize -- my client was not aware of the court date
13 yesterday.

14 **THE COURT:** Well, your client was not aware of the
15 court date yesterday because you didn't tell him.

16 **MR. BURGESS:** That is correct, Your Honor. I was not
17 aware of the court date yesterday as well. I understand -- I
18 spoke with your deputy yesterday, Your Honor. I do understand
19 that it was posted. However, it's odd that this happened.
20 Myself, my father is my partner, who I know you know, as well
21 as my office manager, who checks ECF religiously, none of us
22 saw that we had a court date yesterday so I don't know how I
23 missed it yesterday, but I missed it. I have never missed a
24 court date in front of you. I have never missed a court date
25 in this building. I don't know how I missed it, but all

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1 three people did not notice that I had a court date yesterday.

2 **THE COURT:** The most important person is you. You
3 have that responsibility.

4 **MR. BURGESS:** I'm not trying to put off my
5 responsibility on anybody but myself, Your Honor. I'm just
6 letting the Court know that we have sort of a fail safe check
7 thing in the office, and no one noticed it. Something must
8 have happened that didn't allow all three people that normally
9 check ECF to notice that we had a court hearing yesterday at
10 3:30. That's just for background purposes for the Court.

11 **THE COURT:** Okay.

12 **MR. BURGESS:** Pardon me?

13 **THE COURT:** I was just waiting to see if there was
14 going to be an apology to the Court as opposed to just --

15 **MR. BURGESS:** I started off with an apology to the
16 Court, but I can continue, Your Honor. I did apologize to the
17 Court. I apologized to the Court's staff yesterday on the
18 phone, and I do apologize again to the Court today as well,
19 Your Honor, for missing the court date yesterday. Again, I
20 have given the Court my explanation as to why I was not present
21 yesterday. It was not intentional obviously, but be that as it
22 may, Your Honor, I do apologize. I know this Court is busy,
23 and I know the Court took time out of its schedule to
24 accommodate us yesterday so I do apologize.

25 **THE COURT:** As I was thinking about the consequences

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1 of you not appearing, it seems apparent, and this is something
2 that the government does have a role in, and that is that I
3 can't even talk about the merits of the pending motions without
4 your codefendant here and his attorney, which means that we
5 will adjourn the matter Friday, which would be a mirror image
6 of this hearing, but without you here and your client, with the
7 codefendant and his attorney.

8 Mr. Feller?

9 **MR. FELLER:** Your Honor, I have no problem with that.
10 My only thought, I guess, is --

11 **THE COURT:** Wait, wait, wait, wait. It's ten minutes
12 to 4:00 on a Thursday afternoon, and you only have one thought?

13 **MR. FELLER:** One thought.

14 **THE COURT:** Relevant, okay.

15 **MR. FELLER:** One relevant thought, Your Honor. My
16 recollection of the hearing, the evidentiary hearing we had
17 back in May was that, I don't know if the Court expressly ruled
18 or not, but that the only live motion remaining was
19 Mr. Porter's motion to suppress.

20 **THE COURT:** And I think you are probably right, but I
21 think in terms of efficiency, and so both Mr. Burgess and his
22 client understand what's going on, they have a right to be
23 here, and I'm not going to go ahead with that on a date that I
24 know -- unless everyone agrees to do it in Brooklyn.

25 **MR. FELLER:** That would be fine with me, Your Honor.

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1 **MR. BURGESS:** I could ask Judge Gleeson, Your Honor.

2 **THE COURT:** Is that the famous Judge Gleeson?

3 **MR. BURGESS:** John Gleeson?

4 **THE COURT:** Does he have white hair?

5 **MR. BURGESS:** No, he's a younger, dark-haired. Well,
6 he's getting a little gray, Your Honor. He was a
7 U.S. Attorney. He prosecuted John Gotti, I know that.

8 **THE COURT:** All judges are fungible, Mr. Burgess.
9 You should know that by now.

10 **MR. BURGESS:** Not on the record, Your Honor.

11 **THE COURT:** Okay. Going back to the primary ruling I
12 have to make, I'm going to accept your apology and withdraw the
13 show cause, but the -- it's not going to happen again because
14 you are not going to have another -- the likelihood of you
15 having another case here is not that great, in this courtroom,
16 since -- is this your first or second case in the 12 years I
17 have been here?

18 **MR. BURGESS:** This is my second actually, Your Honor.
19 I had one in 2004, so . . .

20 **THE COURT:** Yeah, and I'm not sure I'm going to still
21 be a judge in 2016.

22 **MR. BURGESS:** We can hope.

23 **THE COURT:** It may be my choice, not somebody else's.
24 The other -- so that's withdrawn, and your apology is accepted.

25 **MR. BURGESS:** Thank you.

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1 **THE COURT:** And we'll give you a date next week to
2 continue -- are you available, Mr. Feller?

3 **MR. FELLER:** Generally, Your Honor, yes.

4 **THE COURT:** Okay. Ms. Ware will circulate a date
5 this afternoon, maybe two dates, for the two of you to choose
6 from, but she can give you those two dates, but the question is
7 whether Mr. Pookrum is available or not. Okay?

8 **MR. FELLER:** All right, Your Honor.

9 **MR. BURGESS:** Okay.

10 **THE COURT:** I think that's all I want to say.
11 Thank you for coming, and thank you for showing up.

12 **MR. BURGESS:** Thank you.

13 **THE COURT:** And I think we're done.

14 **MR. FELLER:** Thank you, Judge.

15 (Proceedings concluded at 3:53 p.m.)

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17 C E R T I F I C A T I O N

18 I, Sheri K. Ward, official court reporter for the
19 United States District Court, Eastern District of
20 Michigan, Southern Division, appointed pursuant to the
21 provisions of Title 28, United States Code, Section 753,
22 do hereby certify that the foregoing is a correct
23 transcript of the proceedings in the above-entitled cause
24 on the date hereinbefore set forth.

25

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1 I do further certify that the foregoing
2 transcript has been prepared by me or under my direction.
3

4 s/ Sheri K. Ward
5 Sheri K. Ward
Official Court Reporter

October 14, 2011
Date

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